Editor's note: Appealed -- aff'd, Civ.No. 84-105-PHX-PGR (D.Ariz. Oct. 1, 1985), 620 F.Supp. 336; aff'd, No. 85-2834 (9th Cir. March 3, 1987), 811 F.2d 1288

PATHFINDER MINES CORP.
(ON RECONSIDERATION)

IBLA 82-752 Decided October 18, 1983

Petition for reconsideration of Pathfinder Mines Corp., 70 IBLA 264, 90 I.D. 10 (1983).

Denied.

1. Rules of Practice: Appeals: Reconsideration

Under 43 CFR 4.21(c), a request for reconsideration of a decision of the Board of Land Appeals must be filed promptly and may be granted only in extraordinarily circumstances. A petition for reconsideration will be denied as untimely when it is filed more than 6 months after issuance of the decision, the petition raises no new matter, and the only apparent justification for such late filing is a reference to a recent court decision which has no controlling effect on the disposition of the appeal.

APPEARANCES: John C. Lacy, Esq., Tucson, Arizona, for petitioner; Fritz L. Goreham, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Pathfinder Mines Corporation (Pathfinder) has petitioned the Board for reconsideration of its decision in Pathfinder Mines Corp., 70 IBLA 264, 90 I.D. 10 (1983), in which we affirmed a decision of the Arizona State Office, Bureau of Land Management, declaring the Mud Nos. 1 through 22 lode mining claims null and void ab initio.

Petitioner had located the claims within the Grand Canyon National Game Preserve which was created by a Presidential proclamation pursuant to authority granted by the Act of June 29, 1906, ch. 3593, 34 Stat. 607. Although neither the statute nor the proclamation expressly precluded or provided for mineral entry of the land, we held that the land was closed to mineral entry. We relied on prior decisions holding that where an act of Congress authorizes the setting aside of lands for particular public purposes and does not either

expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar acts relating to lands of the same status. Accordingly, we compared the Act authorizing the creation of the Grand Canyon Game Preserve with statutes authorizing the creation of other preserves, and found an inescapable correspondence of legislative language and legislative intent. We found that these other preserves were considered not only by the Department to be closed to mineral entry but also by Congress, as evinced by its enactment of subsequent legislation. Because the statutes and proclamations used essentially the same language and because Congress intended to give the areas similar protection, we concluded that the Grand Canyon Game Preserve must similarly be considered closed to mineral entry.

[1] Departmental regulation 43 CFR 4.21(c) provides that reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the Director or an appeals board, sufficient reason appears therefor. The regulation also provides that requests for reconsideration must be filed promptly. Pathfinder's petition was filed more than 6 months after issuance of our decision. Even a promptly filed petition will be denied if the petitioner merely renews arguments made in the original appeal and fails to demonstrate extraordinary circumstances. When a petition is filed more than 6 months after the Board has issued its decision, some additional explanation is required in order to provide the Board with some basis for finding that the petition meets the regulatory requirement for promptness. At a minimum, the petitioner should be required to explain why the petition could not have been filed earlier. In examining Pathfinder's petition, we find that petitioner has raised no new argument. 1/ The only apparent justification for the tardiness of Pathfinder's petition is its citation to a Supreme Court decision issued in June which, however, has no controlling effect on the disposition of this appeal. 2/ Pathfinder has

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1/ Petitioner raises again its argument that the legislation must expressly withdraw the land from mineral location, citing Assistant Attorney General's Opinion, "Authority to Withdraw Lands Within a Forest Preserve," 35 L.D. 262, 265 (1906). That opinion concerned the authority of the Department to withdraw from mineral location lands within a forest reserve for administrative sites, and therefore has less authority as precedent for Pathfinder's appeal than the cases involving the game preserves cited in our earlier decision. The game preserve cases also carry greater authority by having been accepted by Congress as a basis for further legislative action. Petitioner has offered no justification why we should accept the authority of its lone precedent and disregard precedents which are more authoritative because they are more germane and have been accepted by Congress as a predicate for legislative action.

2/ Petitioner cites Bankamerica Corp. v. United States, 462 U.S. 122, 103 S. Ct. 2266, 2272 (1983), in support of its assertion that the patenting of a handful of claims in 1917 and 1922 together with the failure of the Government to positively assert that the land was not open to mineral entry

demonstrated no extraordinary circumstances warranting reconsideration, nor has it provided any justification for the tardiness of its petition.

Both the public at large and the agencies which administer Federal lands have a right to rely on, and to act upon, decisions of this Board, which are final for the Department. To reconsider such decisions long after they are rendered could severely prejudice those who have taken actions in the interim based on such reliance. Indeed, counsel for BLM points out that after a reasonable time from the issuance of our decision, the BLM State Office began to act in reliance on it by issuing decisions voiding thousands of claims similarly located within the preserve.

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until much later means that the statute and proclamation creating the preserve cannot be construed as foreclosing mineral entry. We held that while the issuance of those patents may constitute evidence that the land was considered by one or more employees to be open to mineral entry, that erroneous view on the status of the land does not bind the Department in other cases arising later. The Bankamerica decision provides no authority in support of petitioner's position. The issue in that case was whether the Clayton Act barred interlocking directorates between a bank and a competing insurance company. The Court found:

"We find it difficult to believe that the Department of Justice and the Federal Trade Commission, which share authority for enforcement of the Clayton Act, and the Congress, which oversees those agencies, would have overlooked or ignored the pervasive and open practice of interlocking directorates between banks and insurance companies had it been thought contrary to the law."

Id. at 2271-72. The patenting of a handful of mining claims can hardly compare with Governmental acquiescence in a "pervasive and open practice." The aberrational nature of the issuance of these mining claim patents stands in stark contrast to the Government's failure to assert the power considered by the Court in the Bankamerica case.

We note that in a public lands decision issued 2 days before the Bankamerica decision, a majority of the Justices rejected an argument similar to the one petitioner raises here. In Watt v. Western Nuclear, Inc., 462 U.S. 36, 103 S. Ct. 2218 (1983), the Court held that gravel was a mineral reserved to the United States under the Stock-Raising Homestead Act of 1916, 43 U.S.C. § 299 (1976), notwithstanding the argument raised in the dissenting opinion that "[t]he first attempt by the Department of Interior to acquire ownership of gravel on SRHA lands did not occur until this case began in 1975." 103 S. Ct. at 2238. Moreover, the dissent's objection arose from its view that the Government was adopting a new policy for land patents long granted, a concern which has no application to a mining claimant who did not even locate its claims until after learning that the land was not open to such location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge